

McNamara Declaration

Exhibit 58

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,)
HARPERCOLLINS PUBLISHERS LLC, JOHN)
WILEY & SONS, INC., and PENGUIN)
RANDOM HOUSE LLC)
) Case No.
Plaintiffs,) 1:20-CV-04160-JGK
)
v.)
)
)
INTERNET ARCHIVE and DOES 1 through
5, inclusive,
Defendants.

Videotaped Rule 30(b)(1) and Rule 30(b)(6)
Deposition OF ANDREA ROGINA MILLS
Held via Veritext Virtual
Thursday, October 14, 2021
10:30 a.m. EST

Reported by:
Carissa Stabbler, Registered Professional Reporter

1 going to ask that you just please try to focus on
2 my question.

3 With respect to the universe of
4 in-copyright books that the Internet Archive has
5 digitized, it's a very small percentage of those
6 books that the Internet Archive digitized as new
7 copies; correct? Well, strike that.

8 A. I would say that's --

9 Q. Strike that.

10 A. I would say that's correct, yes.

11 Q. Let me ask the question a little
12 more cleanly.

13 With respect to the universe of books
14 that the Internet Archive has digitized, the copies
15 that the Internet Archive was digitizing, it was a
16 very small percentage that were new copies that the
17 Internet Archive purchased as opposed to used
18 copies; correct?

19 A. Yes, that's correct.

20 Q. And throughout the time that the
21 Internet Archive has been digitizing books, it does
22 so by creating images of each of the pages in those
23 books using a camera; correct?

24 A. Yes, that's right. We use a
25 photographic process.

1 Q. And the photographic process is
2 part of what the Internet Archive refers to as its
3 Scribe machine; correct?

4 A. Yes. There's Scribe hardware in
5 terms of machine, and the software we use is also
6 called Scribe.

7 Q. So is it fair for me to refer to
8 the Scribe machine as consisting of both Scribe
9 hardware and Scribe software?

10 A. I think that's fair. We often say
11 "Scribe system." That helps.

12 Q. Okay. That's great. Thank you.
13 And the Scribe system of hardware and software
14 consists of hardware and software that the Internet
15 Archive developed itself; correct?

16 A. Yes. Yes, it has -- it has
17 developed over time. The -- in terms of the
18 hardware, the Internet Archive doesn't build its
19 own computers or cameras, so those are commercial
20 products.

21 But the hardware of the Scribe machine
22 is developed and has been manufactured by the
23 Internet Archive, and the software is developed and
24 maintained by the Internet Archive.

25 Q. And when the Internet Archive was

1 BY MR. ZEBRAK:

2 Q. So you mentioned that Internet
3 Archive purchases in-copyright books for scanning
4 from its digitization partner in China named Datum
5 Data; correct?

6 A. Yes, that's right.

7 Q. And to your knowledge, does
8 Internet Archive know anything about the source or
9 sources from which Datum Data obtains the
10 in-copyright books that it sells to Internet
11 Archive for scanning?

12 MS. LANIER: Objection. Scope.

13 THE WITNESS: So not to my knowledge.
14 I'm not aware of where the books come from.

15 BY MR. ZEBRAK:

16 Q. When Internet Archive obtains a
17 book for scanning that's in copyright, does
18 Internet Archive do anything to determine whether
19 that physical book is a lawful copy?

20 MS. LANIER: Objection. Scope.

21 Objection. Calls for a legal conclusion.

22 THE WITNESS: How would you define a
23 legal copy?

24 BY MR. ZEBRAK:

25 Q. Are you familiar with what a

1 just mentioned of obtaining eBooks from the
2 publishers represents a very small percentage of
3 the in-copyright titles that Internet Archive is
4 delivering through its website?

5 MS. LANIER: Objection. Scope.

6 THE WITNESS: It's my understanding
7 that there are not very -- some of the publishers
8 that we have approached or that we have been in
9 conversation with haven't been interested in
10 selling eBooks or physical books to the Internet
11 Archive even though we have this program.

12 BY MR. ZEBRAK:

13 Q. So with respect to the physical
14 books that the Internet Archive digitizes, are
15 there any sources from which the Internet Archive
16 obtains those physical books besides library
17 donations and purchases from Better World Books or
18 perhaps other entities?

19 A. So one that comes to mind is our
20 partners at Datum Data who digitize for the
21 Internet Archive in China. There are some books
22 purchased through them, through their connections
23 in China, so that is a source.

24 I don't recall off the top of my head
25 the throughput of that center off the top of my

1 Q. Is it true that in the 2013 to '16
2 period, Internet Archive was having a difficult
3 time persuading libraries or other donors to donate
4 in-copyright titles?

5 MS. LANIER: Objection. Scope.

6 THE WITNESS: I couldn't comment on
7 whether they were having a difficult time, that
8 that was the reason. I just -- I just know that it
9 was a time when we were growing -- attempting to
10 grow the set that was to be digitized. I don't
11 know the exact reason.

12 BY MR. ZEBRAK:

13 Q. Okay. But you do know that at
14 least in the 2013 to '16 time period, Internet
15 Archive was not receiving a large number of
16 in-copyright titles to digitize relative to the
17 period of 2016 onward; is that what you're saying?
18 Actually, strike that. Strike that.

19 What happened in the period of 2016
20 onward that led to a spike in the number of books
21 that Internet Archive began scanning per day?

22 MS. LANIER: Objection. Scope. Calls
23 for speculation.

24 THE WITNESS: It was a period when the
25 site in Hong Kong was established, so there was a

1 move from Mainland China to Hong Kong. There was a
2 larger footprint given to the project by Datum
3 Data, and there was material prepared and ready to
4 be sent for digitization which represented an
5 uptick in material coming through.

6 BY MR. ZEBRAK:

7 Q. How long has Internet Archive
8 worked with Datum Data for digitization of books?

9 A. I'm not aware of the exact date.
10 I believe it was at or prior to 2009. I'm not -- I
11 don't know exactly.

12 Q. So working with Datum Data, the
13 digitization happened on Mainland China early on.
14 It then moved to Hong Kong, and now it's moved back
15 to Mainland China; correct?

16 A. Yes, that's right.

17 Q. Okay. Are there -- are you
18 familiar with the terms within the Internet Archive
19 of scanning supercenter?

20 A. Yeah, I am familiar with the
21 supercenter term, yes.

22 Q. What does that mean?

23 A. So in general practice, that has
24 meant our sites that have, let's say, more than ten
25 Scribe stations.

1 Q. Are you familiar with how many
2 supercenters Internet Archive has currently?

3 A. So I think in actuality, our only
4 supercenter is in Cebu, Philippines. A close
5 second would be in Mainland China. There's
6 currently just ten stations there, though. It's
7 reduced from "super" slightly.

8 Q. And are there other digitization
9 centers that are -- have five or more Scribe
10 machines outside the United States?

11 A. Outside of the United States, yes.

12 Q. And could you list for me where
13 those are?

14 A. So the only site that currently
15 has more -- or ten stations is at our site in
16 London, U.K., and that is what I would call an
17 Internet Archive scanning center in the sense that
18 it's Internet Archive U.K., so it is a separate
19 entity as well but similar to Internet Archive
20 Canada that operates in London.

21 Q. Regardless -- so you said you --
22 you're the executive director of Internet Archive
23 Canada; right?

24 A. Yes, that's right.

25 Q. And Internet Archive Canada, one

1 of its activities is to scan in-copyrighted books;
2 correct?

3 A. We -- Internet Archive Canada has
4 digitized in-copyright material. It is a genuine
5 fraction of the material that we've done in Canada.

6 Q. So is it fair to say that with
7 respect to the in-copyright modern books that
8 appear on the Books to Borrow collection on
9 Internet Archive, most of those books are books
10 that -- well, strike that.

11 Internet Archive scans in-copyright
12 titles both in the United States and abroad;
13 correct?

14 A. Yes, that's correct.

15 Q. And Internet Archive does that
16 directly by having its employees doing the
17 scanning, and it also does it sometimes by hiring,
18 you know, an entity like Datum Data to do the
19 scanning for it; correct?

20 A. Yes, that's right, yes. Yes.

21 Q. Where do Internet Archive
22 employees do the scanning of in-copyright books
23 themselves directly? What locations?

24 A. So -- and are you refer -- you're
25 interested in any of the locations no matter the

1 country?

2 Q. Yes, please.

3 A. When Internet Archive employees of
4 any of the international entities are working, they
5 are in what we would call an Internet Archive
6 digitization center.

7 Q. Let me try to ask this more
8 simply. Internet Archive has digitization centers
9 both in the United States and abroad; correct?

10 A. Yes, that's correct.

11 Q. Okay. Could you list for me where
12 Internet Archive has digitization centers outside
13 the United States?

14 A. Sites with Internet Archive
15 employees that are employed by an international
16 Internet Archive entity would be Toronto, Ontario,
17 Edmonton, Alberta, London, U.K., and the other
18 sites that are outside of the United States are
19 not -- they don't include Internet Archive
20 employees.

21 Q. Internet Archive has what you've
22 been referring to as digitization centers; correct?

23 A. Yes, that's what we call them.

24 Q. And at these digitization centers,
25 Internet Archive is either having its employees

1 processes and workflows with those partners. There
2 is some autonomy in how those procedures are
3 achieved, you know, as long as the policies are
4 followed. They manage their own employees. It
5 isn't an Internet Archive manager telling their
6 employees, you know, day to day what to do.

7 BY MR. ZEBRAK:

8 Q. So Internet Archive buys a book
9 that's a modern in-copyright book from Datum Data,
10 and Internet Archive then asks Datum Data to
11 digitize the book for Internet Archive; correct?

12 A. Yes, I think that's a -- yes, in
13 basic terms, yes.

14 Q. And when Datum Data buys the --
15 sells the book to -- strike that.

16 When Datum Data sells a book to
17 Internet Archive for digitization, does Datum Data
18 deliver that book to Internet Archive for Internet
19 Archive to review and inspect?

20 A. The Internet Archive does not
21 physically receive that book until it's digitized,
22 after it's digitized.

23 Q. So is it the case that what
24 happens is Internet Archive buys a modern
25 in-copyrighted book from Datum Data in China, Datum

1 Data then digitizes the book, and then at some
2 point after digitization, Datum Data ships the book
3 to Internet Archive for storage?

4 A. Yes, that is the case. We also
5 have a system of storage areas such that in the
6 digitization center, let's say, that Datum Data is
7 working in, when a book is scanned but before it
8 ships, it's in a storage area so we know its
9 location. We fill that storage area until we have
10 enough for a shipping container, and then it gets
11 on the water.

12 Q. And then when Internet Archive has
13 these modern in-copyrighted books digitized at its
14 request by Datum Data or any other entity in a
15 foreign country, once it's digitized, that
16 digitized copy is then uploaded and sent to
17 Internet Archive's computers in the United States;
18 correct?

19 A. Yes, that's correct.

20 Q. When Datum -- strike that.

21 How does Internet Archive determine
22 what books it wants to digitize? Is it --

23 A. So in general, it's a -- again,
24 there's a set of criteria, so it's a book that we
25 have not digitized previously. There are some what

1 physical archive in California.

2 Q. And that physical archive, that's
3 locked away. The books in that archive, those
4 physical copies aren't being loaned out; correct?

5 A. For books that Internet Archive
6 owns, they go into a closed pallet in a closed
7 container in the warehouse, and they do not
8 circulate.

9 Q. Is there a rule of thumb at
10 Internet Archive about Internet Archive's average
11 cost per book to digitize?

12 MS. LANIER: Objection. Scope.

13 THE WITNESS: Are you referring to
14 material that we are paid to digitize or that we
15 pay to digitize?

16 BY MR. ZEBRAK:

17 Q. How much does it cost Internet
18 Archive on average to digitize a book?

19 MS. LANIER: Same objection.

20 THE WITNESS: That's a good question.
21 I don't have an answer. I'm sorry. I can't give
22 you an answer.

23 MR. ZEBRAK: That's all right.

24 Ms. Weissman, would you please publish
25 Tab 55, 56, and 59.

REPORTER'S CERTIFICATE

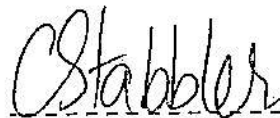
I, CARISSA STABBLER, RPR, Registered
Professional Reporter, certify;

The foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me;

That the testimony of the witness and
all objections made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 20th day of October 2021.

A handwritten signature in black ink, appearing to read "CStabbler", written over a dashed horizontal line.

PER: Carissa Stabbler, RPR

Court Reporter